

LEGISLATURE OF THE STATE OF IDAHO  
Sixty-second Legislature First Regular Session - 2013

IN THE SENATE

SENATE BILL NO. 1029

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO CODIFIER'S CORRECTIONS; AMENDING SECTION 23-404, IDAHO CODE, TO MAKE CODIFIER'S CORRECTIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 23-1003, IDAHO CODE, TO REMOVE A CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING THE HEADING FOR PART 8, CHAPTER 9, TITLE 28, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 33-2144, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE, TO MAKE A CODIFIER'S CORRECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-4514, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-6311, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 47-330, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 48-406, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-1908, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 54-3503, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-3504, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-3508, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 59-1302, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 59-1324, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 59-1391, IDAHO CODE, TO MAKE CODIFIER'S CORRECTIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 65-501, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 65-503A, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 23-404, Idaho Code, be, and the same is hereby amended to read as follows:

23-404. DISTRIBUTION OF MONEYS IN LIQUOR ACCOUNT. (1) The moneys received into the liquor account shall be transferred or appropriated as follows:

(a) An amount of money equal to the actual cost of purchase of alcoholic liquor and payment of expenses of administration and operation of the division, as determined by the director and certified quarterly to the state controller, shall be transferred back to the division; provided, that the amount so transferred back for administration and operation of the division shall not exceed the amount authorized to be expended by regular appropriation authorization.

(b) From fiscal year 2006 through fiscal year 2009, forty percent (40%) of the balance remaining after transferring the amounts authorized by paragraph (a) of this subsection shall be transferred or appropriated pursuant to this paragraph (b). Beginning in fiscal year 2010, the percentage transferred pursuant to this paragraph (b) shall increase to forty-two percent (42%) with an increase of two percent (2%) for each

subsequent fiscal year thereafter until fiscal year 2014, when such percentage shall be fifty percent (50%).

(i) For fiscal year 2006 and through fiscal year 2009, one million eight hundred thousand dollars (\$1,800,000) shall be appropriated and paid to the cities and counties as set forth in paragraphs (c) (i) and (c) (ii) of this subsection;

(ii) Two million eighty thousand dollars (\$2,080,000) shall be transferred annually to the substance abuse treatment fund, ~~which~~ that is created in section 23-408, Idaho Code;

(iii) Six hundred thousand dollars (\$600,000) shall be transferred annually to the state community college account, created in section 33-2139, Idaho Code;

(iv) One million two hundred thousand dollars (\$1,200,000) shall be transferred annually to the public school income fund, as defined in section 33-903, Idaho Code;

(v) Six hundred fifty thousand dollars (\$650,000) shall be transferred annually to the cooperative welfare account in the dedicated fund;

(vi) Six hundred eighty thousand dollars (\$680,000) shall be transferred annually to the drug court, mental health court and family court services fund;

(vii) Four hundred forty thousand dollars (\$440,000) shall be transferred annually to the drug and mental health court supervision fund ~~which~~ that is created in section 23-409, Idaho Code; and

(viii) The balance shall be transferred to the general fund.

(c) The remainder of the moneys received in the liquor account shall be appropriated and paid as follows:

(i) Forty percent (40%) of the balance remaining after the transfers authorized by paragraphs (a) and (b) of this subsection have been made is hereby appropriated to and shall be paid to the several counties. Each county shall be entitled to an amount in the proportion that liquor sales through the division in that county during the state's previous fiscal year bear to total liquor sales through the division in the state during the state's previous fiscal year, except that no county shall be entitled to an amount less than that county received in distributions from the liquor account during the state's fiscal year 1981.

(ii) Sixty percent (60%) of the balance remaining after the transfers authorized by paragraphs (a) and (b) of this subsection have been made is hereby appropriated to and shall be paid to the several cities as follows:

1. Ninety percent (90%) of the amount appropriated to the cities shall be distributed to those cities ~~which~~ that have a liquor store or distribution station located within the corporate limits of the city. Each such city shall be entitled to an amount in the proportion that liquor sales through the division in that city during the state's previous fiscal year bear to total liquor sales through the division in the state during the state's previous fiscal year, except that no city shall be entitled to an amount less than that city

received in distributions from the liquor account during the state's fiscal year 1981;

2. Ten percent (10%) of the amount appropriated to the cities shall be distributed to those cities ~~which~~ that do not have a liquor store or distribution station located within the corporate limits of the city. Each such city shall be entitled to an amount in the proportion that that city's population bears to the population of all cities in the state ~~which~~ that do not have a liquor store or distribution station located within the corporate limits of the city, except that no city shall be entitled to an amount less than that city received in distributions from the liquor account during the state's fiscal year 1981.

(2) All transfers and distributions shall be made periodically, but not less frequently than quarterly but, the apportionments made to any county or city, ~~which~~ that may during the succeeding three (3) year period be found to have been in error either of computation or transmittal, shall be corrected during the fiscal year of discovery by a reduction of apportionments in the case of over-apportionment or by an increase of apportionments in the case of under-apportionment. The decision of the director on entitlements of counties and cities shall be final, and shall not be subject to judicial review.

SECTION 2. That Section 23-1003, Idaho Code, be, and the same is hereby amended to read as follows:

23-1003. BREWERS', DEALERS' AND WHOLESALERS' LICENSES. (a) Before any brewer shall manufacture, or any dealer or wholesaler import or sell, beer within the state of Idaho he shall apply to the director for a license so to do. The application form shall be prescribed and furnished by the director and require that the applicant therein show that he possesses all the qualifications and none of the disqualifications of a licensee. To determine qualification for a license, the director shall cause an investigation ~~which~~ that shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the criminal history background check for such person with the application. The application shall also be accompanied by the required licensee fee; provided, that where the applicant is or will be within more than one (1) of the foregoing classifications he shall apply for each classification but shall pay only one (1) license fee, which shall be for the classification applied for requiring the highest fee. If the director is satisfied that the applicant possesses the qualifications and none of the disqualifications for such license, he shall issue a license for each classification applied for, subject to the restrictions and upon the conditions in this act specified, which license or licenses shall be at all times prominently displayed in the place of business of the licensee.

(b) Each wholesaler shall, in addition to the application, file with the director a notice in writing signed by the dealer or brewer and the wholesaler stating the geographic territory within which the wholesaler will distribute beer to retailers. Said territory will be the territory agreed upon

1 between the dealer or brewer and the wholesaler and may not be changed or mod-  
 2 ified without the consent of both the dealer or brewer and the wholesaler.  
 3 Provided however, nothing contained herein shall be interpreted to prohibit  
 4 a brewer or dealer from permitting more than one (1) distributor for the same  
 5 geographic territory.

6 (c) In the event that a wholesaler sells beer to a retailer who is lo-  
 7 cated outside the geographical territory designated by such wholesaler on  
 8 the notice provided for in subsection (b) of this section, the dealer or  
 9 wholesaler who has designated the geographical territory in which the sale  
 10 occurred may apply to a district court of this state for the issuance of an  
 11 injunction enjoining sales of beer by the wholesaler outside of his design-  
 12 ated geographical territory. The procedure for issuance of an injunction  
 13 pursuant to this act shall be subject to the ~~provisions of chapter 4, title~~  
 14 ~~8, Idaho Code, and the Idaho Rules of Civil Procedure.~~ Upon proof to  
 15 the court that a wholesaler has made a sale of beer outside his designated  
 16 geographical territory, the court shall issue an injunction directed to the  
 17 wholesaler prohibiting sales of beer outside his designated geographical  
 18 territory.

19 (d) Any brewer licensed within the state of Idaho who produces fewer  
 20 than thirty thousand (30,000) barrels of beer annually, upon payment of a re-  
 21 tailer's annual license fee, may be issued a brewer's retail beer license for  
 22 the retail sale of the products of his brewery at his licensed premises or one  
 23 (1) remote retail location, or both. Any brewer selling beer at retail or  
 24 selling to a retailer must pay the taxes required in section 23-1008, Idaho  
 25 Code, but need not be licensed as a wholesaler for the purpose of selling beer  
 26 at the brewery or at one (1) remote retail location.

27 (e) Any brewer licensed within the state of Idaho who produces fewer  
 28 than thirty thousand (30,000) barrels of beer annually, may be issued a  
 29 brewer's pub license. Upon payment of a retailer's annual license fee, and  
 30 subject to the fees in sections 23-1015 and 23-1016, Idaho Code, a brewer  
 31 may, at his licensed brewery, at one (1) remote retail location, or both,  
 32 sell at retail the products of any brewery by the individual bottle, can or  
 33 glass. Any brewer selling beer at retail or selling to a retailer must pay  
 34 the taxes required in section 23-1008, Idaho Code, on the products of his  
 35 brewery, but need not be licensed as a wholesaler for the purpose of selling  
 36 beer at the brewery or at one (1) remote retail location.

37 (f) A brewer licensed under the provisions of subsection (d) or (e) of  
 38 this section may be licensed as a wholesaler for the sale of beer to retail-  
 39 ers other than at the licensed brewery and one (1) remote retail location and  
 40 shall not be required to pay an additional fee therefor. Such brewer shall,  
 41 however, comply with and be subject to all other regulations or provisions  
 42 of law which apply to a wholesaler's license, save and except as such laws  
 43 may restrict such sales at the licensed brewery or one (1) other remote re-  
 44 tail location. The holder of a brew pub license shall not be disqualified  
 45 from holding a retail wine license or wine by the drink license for the sale  
 46 of wine at the brew pub premises on the grounds that said licensee is also li-  
 47 censed as a wholesaler.

48 SECTION 3. That the Heading for Part 8, Chapter 9, Title 28, Idaho Code,  
 49 be, and the same is hereby amended to read as follows:

PART 8.  
TRANSITION PROVISIONS FOR 2011 AMENDMENTS

SECTION 4. That Section 33-2144, Idaho Code, be, and the same is hereby amended to read as follows:

33-2144. DISBURSEMENT TO PUBLIC EMPLOYEE RETIREMENT FUND. The disbursing of funds as provided by sections 33-2139 through 33-2143, Idaho Code, shall be subject to the payments required to be made by section ~~59-1332B~~ 59-1324, Idaho Code, from the state ~~junior~~ community college ~~fund~~ account to the public employee retirement fund. Such payments shall be prior to the payment of funds from the state ~~junior~~ community college ~~fund~~ account to the several ~~junior~~ community college districts as provided by said statute.

SECTION 5. That Section 39-4514, Idaho Code, be, and the same is hereby amended to read as follows:

39-4514. GENERAL PROVISIONS. (1) Application. Except as specifically provided herein, ~~S~~sections 39-4510 through 39-4512B, Idaho Code, shall have no effect or be in any manner construed to apply to persons not executing a living will and durable power of attorney for health care, POST form or other health care directive pursuant to this chapter nor shall these sections in any manner affect the rights of any such persons or of others acting for or on behalf of such persons to give or refuse to give consent or withhold consent for any medical care; neither shall sections 39-4510 through 39-4512B, Idaho Code, be construed to affect chapter 3 or chapter 4, title 66, Idaho Code, in any manner.

(2) Euthanasia, mercy killing, or assisted suicide. This chapter does not make legal, and in no way condones, euthanasia, mercy killing, or assisted suicide or permit an affirmative or deliberate act or omission to end life, including any act or omission described in section 18-4017, Idaho Code, other than to allow the natural process of dying.

(3) Withdrawal of care. Assisted feeding or artificial nutrition and hydration may not be withdrawn or denied if its provision is directed by a competent patient in accordance with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogate decision maker in accordance with section 39-4504, Idaho Code. Health care other than assisted feeding or artificial nutrition and hydration may not be withdrawn or denied if its provision is directed by a competent patient in accordance with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogated decision maker in accordance with section 39-4504, Idaho Code, unless such care would be futile care as defined in subsection (6) of this section. Except as specifically provided in chapters 3 and 4, title 66, Idaho Code, health care, assisted feeding or artificial nutrition and hydration, the denial of which is directed by a competent patient in accordance with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogate decision maker in accordance with section 39-4504, Idaho Code, shall be withdrawn and denied in accordance with a valid directive. This subsection does not require

1 provision of treatment to a patient if it would require denial of the same or  
2 similar treatment to another patient.

3 (4) Comfort care. Persons caring for a person for whom artificial life-  
4 sustaining procedures or artificially administered nutrition and hydration  
5 are withheld or withdrawn shall provide comfort care as defined in section  
6 39-4502, Idaho Code.

7 (5) Presumed consent to resuscitation. There is a presumption in favor  
8 of consent to cardiopulmonary resuscitation (CPR) unless:

9 (a) A completed durable power of attorney for health care or living will  
10 for that person is in effect, pursuant to section 39-4510, Idaho Code,  
11 in which the person has stated that he or she does not wish to receive  
12 cardiopulmonary resuscitation, and any terms set forth in the durable  
13 power of attorney for health care or living will upon which such state-  
14 ment is conditioned have been met; or

15 (b) The person's surrogate decision maker has communicated the per-  
16 son's wishes not to receive cardiopulmonary resuscitation and any terms  
17 on which the wishes not to receive cardiopulmonary resuscitation are  
18 conditioned have been met; or

19 (c) The person has a physician orders for scope of treatment (POST) form  
20 that meets the requirements of section 39-4512A, Idaho Code, stating  
21 that the person does not wish to receive cardiopulmonary resuscita-  
22 tion and any terms on which the statement is conditioned have been met  
23 and/or has a proper POST identification device pursuant to section  
24 39-4502(15), Idaho Code.

25 (6) Futile care. Nothing in this chapter shall be construed to require  
26 medical treatment that is medically inappropriate or futile; provided that  
27 this subsection does not authorize any violation of subsection (3) of this  
28 section. Futile care does not include comfort care. Futile care is a course  
29 of treatment:

30 (a) For a patient with a terminal condition, for whom, in reasonable  
31 medical judgment, death is imminent within hours or at most a few days  
32 whether or not the medical treatment is provided and that, in reasonable  
33 medical judgment, will not improve the patient's condition; or

34 (b) The denial of which in reasonable medical judgment will not result  
35 in or hasten the patient's death.

36 (7) Existing directives and directives from other states. A health  
37 care directive executed prior to July 1, 2012, but which was in the living  
38 will, durable power of attorney for health care, DNR, or POST form pursuant  
39 to prior Idaho law at the time of execution, or in another form that contained  
40 the elements set forth in this chapter at the time of execution, shall be  
41 deemed to be in compliance with this chapter. Health care directives or sim-  
42 ilar documents executed in another state that substantially comply with this  
43 chapter shall be deemed to be in compliance with this chapter. This section  
44 shall be liberally construed to give the effect to any authentic expression  
45 of the person's prior wishes or directives concerning his or her health care.

46 (8) Insurance.

47 (a) The making of a living will and/or durable power of attorney for  
48 health care, physician orders for scope of treatment (POST) form, or DNR  
49 order pursuant to this chapter shall not restrict, inhibit or impair in  
50 any manner the sale, procurement or issuance of any policy of life in-

1       surance, nor shall it be deemed to modify the terms of an existing pol-  
 2       icy of life insurance. No policy of life insurance shall be legally im-  
 3       paired or invalidated in any manner by the withholding or withdrawal of  
 4       artificial life-sustaining procedures from an insured person, notwith-  
 5       standing any term of the policy to the contrary.

6       (b) No physician, health care facility or other health care provider  
 7       and no health care service plan, insurer issuing disability insurance,  
 8       self-insured employee plan, welfare benefit plan or nonprofit hospi-  
 9       tal service plan shall require any person to execute a living will and  
 10      durable power of attorney for health care or physician orders for scope  
 11      of treatment (POST) form, or DNR order as a condition for being insured  
 12      for, or receiving, health care services.

13      (9) Portability and copies.

14      (a) A physician orders for scope of treatment (POST) form that meets the  
 15      requirements of section 39-4512A, Idaho Code, shall be transferred with  
 16      the person to, and be effective in, all care settings including, but not  
 17      limited to, home care, ambulance or other transport, hospital, residen-  
 18      tial care facility, and hospice care. The POST form shall remain in ef-  
 19      fect until such time as there is a valid revocation pursuant to section  
 20      39-4511A, Idaho Code, or new orders are issued by a physician, APPN or  
 21      PA.

22      (b) A photostatic, facsimile or electronic copy of a valid physician  
 23      orders for scope of treatment (POST) form may be treated as an original  
 24      by a health care provider or by an institution receiving or treating a  
 25      person.

26      (10) Registration. A directive or the revocation of a directive meet-  
 27      ing the requirements of this chapter may be registered with the secretary  
 28      of state pursuant to section 39-4515, Idaho Code. Failure to register the  
 29      health care directive shall not affect the validity of the health care direc-  
 30      tive.

31      (11) Rulemaking authority.

32      (a) The department of health and welfare shall adopt those rules and  
 33      protocols necessary to administer the provisions of this chapter.

34      (b) In the adoption of a physician orders for scope of treatment (POST)  
 35      or DNR protocol, the department shall adopt standardized POST identifi-  
 36      cation devices to be used statewide.

37      SECTION 6. That Section 39-6311, Idaho Code, be, and the same is hereby  
 38      amended to read as follows:

39      39-6311. ORDER -- TRANSMITTAL TO LAW ENFORCEMENT AGENCY -- RECORD IN  
 40      IDAHO ~~LAW ENFORCEMENT TELECOMMUNICATIONS~~ PUBLIC SAFETY AND SECURITY IN-  
 41      FORMATION SYSTEM -- ENFORCEABILITY. (1) The orders issued under sections  
 42      39-6306 and 39-6308, Idaho Code, or foreign protection orders recognized un-  
 43      der section 39-6306A, Idaho Code, shall be in a form approved by the supreme  
 44      court of the state of Idaho.

45      (2) (a) A copy of a protection order granted or a foreign protection or-  
 46      der recognized under this chapter shall be forwarded by the clerk of the  
 47      court on or before the next judicial day to the appropriate law enforce-  
 48      ment agency specified in the order.

(b) Upon receipt of the order, the law enforcement agency shall forthwith enter the order and its expiration date into the Idaho ~~law enforcement telecommunications~~ public safety and security information system available in this state used by law enforcement agencies to list outstanding warrants. Notification of service as required in section 39-6310, Idaho Code, shall also be entered into the Idaho ~~law enforcement telecommunications~~ public safety and security information system upon receipt. Entry into the Idaho ~~law enforcement telecommunications~~ public safety and security information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state. Renewals of the order shall be recorded in the same manner as original orders. The information entered shall specifically state that the protection order is civil in nature. If the appropriate law enforcement agency determines that the service information sheet is incomplete or cannot be entered into the Idaho ~~law enforcement telecommunications~~ public safety and security information system upon receipt, the service information sheet shall be returned to the clerk of the court. The clerk of the court shall then notify the petitioner of the error or omission.

(3) Law enforcement agencies shall establish procedures reasonably adequate to assure that an officer approaching or actually at the scene of an incident of domestic violence may be informed of the existence and terms of such protection order.

(4) A protection order shall remain in effect for the term set by the court or until terminated by the court. A protection order may, upon motion and upon good cause shown, be renewed for additional terms not to exceed one (1) year each if the requirements of this chapter are met. The motion to renew an order may be granted without a hearing, if not timely objected to by the party against whom the order was entered. If the petitioner voluntarily and without duress consents to the waiver of any portion of the protection order vis-a-vis the respondent pursuant to section 39-6313, Idaho Code, the order may be modified by the court.

SECTION 7. That Section 47-330, Idaho Code, be, and the same is hereby amended to read as follows:

47-330. OIL AND GAS CONSERVATION FUND CREATED -- TAX. (1) For the purposes of paying the expenses of administration of this act and for the privilege of extracting oil and gas in this state, there is hereby levied and imposed on all oil and gas produced, saved and sold or transported from the premises in Idaho where produced a tax of two and one-half percent (2.5%) of the market value of the oil or gas produced at the site of production. If the oil and gas is transported from the premises prior to sale, then the tax will be determined based on the published Henry Hub spot price for gas or WTI Cushing spot price for crude oil at the close of business the day the oil or gas leaves the premises. Transportation from the premises prior to the sale does not include movement of oil or gas from the wellhead to another site in Idaho by the same person for dehydration or other processing required for sale. This tax is in addition to all other taxes provided by law. It shall be the duty of the state tax commission to enforce collection of this tax and to make such rules as may be necessary, pursuant to the provisions of chap-



1 ter 52, title 67, Idaho Code. All money so collected shall be remitted to the  
 2 state treasurer for deposit in the oil and gas conservation fund, which fund  
 3 is hereby created in the office of the state treasurer of the state of Idaho.

4 (2) The persons owning an interest, ~~(working interest, royalty inter-~~  
 5 ~~est, payments out of production, or any other interest),~~ in the oil and gas,  
 6 or in the proceeds thereof, shall be liable for such tax in proportion to  
 7 their ownership at the time of production. The tax so assessed and fixed  
 8 shall be payable quarterly, and the sum so due shall be remitted to the state  
 9 tax commission, on or before the twentieth ~~(20th)~~ of the next month follow-  
 10 ing the preceding quarter in which the tax accrued, by the producer on be-  
 11 half of himself and all other interested persons. The person remitting the  
 12 tax, as herein provided, is hereby empowered and required to deduct from any  
 13 amounts due the persons owning an interest in the oil and gas, or in the pro-  
 14 ceeds thereof, at the time of production a proportionate amount of such tax  
 15 before making payment to such persons.

16 (3) The tax imposed by this section shall apply to all lands in the state  
 17 of Idaho, anything in this act to the contrary notwithstanding; provided  
 18 however, there shall be exempted from the tax hereinabove levied and as-  
 19 sessed the following, to wit:

20 (a) The interest of the United States of America and the interest of the  
 21 state of Idaho and the political subdivisions thereof in any oil or gas  
 22 or in the proceeds thereof.

23 (b) The interest of any Indian or Indian tribe in any oil or gas or the  
 24 proceeds thereof, produced from lands subject to the supervision of the  
 25 United States.

26 (c) Oil and gas used in producing operations or for repressuring or re-  
 27 cycling purposes.

28 (4) To the extent that such sections are not in conflict with the pro-  
 29 visions of this act, the deficiency in tax and notice of deficiency as well  
 30 as the collection and enforcement procedures provided by the Idaho income  
 31 tax act, sections 63-3038, 63-3039, 63-3040, 63-3042 through 63-3065A,  
 32 63-3068, 63-3071 and 63-3075 through 63-3078, Idaho Code, shall apply and be  
 33 available to the state tax commission for enforcement of the provisions of  
 34 this act and the assessment and collection of any amounts due. Said sections  
 35 shall for this purpose be considered a part of this act and wherever liens  
 36 or any other proceedings are defined as income tax liens or proceedings they  
 37 shall, when applied in enforcement or collection pursuant to this act, be  
 38 described as an oil and gas tax lien or proceeding.

39 The state tax commission may be made a party defendant in an action at  
 40 law or in equity by any person aggrieved by the unlawful seizure or sale of  
 41 his property, or in any suit for refund or to recover an overpayment, but  
 42 only the state of Idaho shall be responsible for any final judgment secured  
 43 against the state tax commission, and said judgment or any other amount er-  
 44 roneously or illegally collected shall be paid or satisfied out of the state  
 45 refund account created by section 63-3067, Idaho Code.

46 (5) All moneys collected under this chapter shall be distributed by the  
 47 state tax commission as follows:

48 (a) An amount of money shall be distributed to the state refund account  
 49 sufficient to pay current refund claims. All refunds authorized under

1 this chapter by the state tax commission shall be paid through the state  
2 refund account, and those moneys are continuously appropriated.

3 (b) For the balance of the proceeds, forty percent (40%) shall be dis-  
4 tributed by the end of the month following each quarterly due date by the  
5 state tax commission into any oil and gas revenue share account as fol-  
6 lows:

7 (i) Twenty-eight percent (28%) is hereby appropriated and shall  
8 be paid to the current expense fund of the county from which the oil  
9 or gas was produced;

10 (ii) Twenty-eight percent (28%) is hereby appropriated and shall  
11 be paid to the cities within the county from which the oil or gas  
12 was produced. Such funds shall be distributed to each city based  
13 upon the proportion that the city's population bears to the total  
14 population of all of the cities within the county;

15 (iii) Twenty-eight percent (28%) is hereby appropriated and shall  
16 be paid to the public school income fund; and

17 (iv) Sixteen percent (16%) shall be transferred to the local eco-  
18 nomic development account that is hereby created in the agency as-  
19 set fund to provide assistance in those counties experiencing a  
20 severe economic hardship due to the cutback or closure of business  
21 and industry associated with oil or gas production.

22 (c) The remainder of the moneys deposited into the oil and gas conser-  
23 vation fund, sixty percent (60%) of the proceeds after refunds, may  
24 be expended pursuant to legislative appropriation and shall be used  
25 for defraying the expenses of the oil and gas conservation commission  
26 in carrying out the provisions of this act. At the beginning of each  
27 fiscal year, those moneys in the oil and gas conservation fund, after  
28 applicable refunds and distribution as noted in paragraphs (a) and (b)  
29 of this subsection, that exceed two hundred percent (200%) of the cur-  
30 rent year's appropriations for the oil and gas conservation commission  
31 shall be transferred to the general fund. The oil and gas conservation  
32 commission shall audit all bills for salaries and expenses incurred in  
33 the enforcement of this act that may be payable from the oil and gas con-  
34 servation fund ~~which~~ that shall be audited, allowed and paid as to the  
35 claims against the state.

36 SECTION 8. That Section 48-406, Idaho Code, be, and the same is hereby  
37 amended to read as follows:

38 48-406. INJUNCTIONS. (1) Parties Authorized to Bring. Any person, mu-  
39 nicipal or other public corporation, or the state of Idaho, may maintain an  
40 action to enjoin a continuance of any act or acts in violation of this act.

41 (2) Authority to Issue. If it appears to the court upon any application  
42 for a temporary injunction, or upon the hearing for any order to show cause  
43 why a temporary injunction should not be issued, or, if the court shall find,  
44 in any such action, that any defendant therein is violating, or has violated,  
45 this act, then the court shall enjoin the defendant from doing all acts which  
46 are prohibited in said act.

47 (3) Restraints Which May Be Included. The court may, in its discre-  
48 tion, include in any injunction against a violation of this act such other  
49 restraints as it may deem expedient in order to deter the defendant there-

1 from, and ~~insure~~ ensure against his committing a future violation of this  
2 act.

3 (4) Article or Products Covered. Any injunction against a violation  
4 of this act, whether temporary or final, shall cover every article or prod-  
5 uct handled or sold by the defendant and not merely the particular article or  
6 product involved in the pending action.

7 (5) Undertaking or Bond. As a condition to the granting of a tempo-  
8 rary injunction under this act, the court may require of the plaintiff, ex-  
9 cepting when a municipal or public corporation or the state of Idaho is the  
10 plaintiff, a written undertaking in such sum as the court deems reasonable  
11 and proper in the premises, with sufficient sureties to the effect that the  
12 plaintiff will pay to the person enjoined such costs and damages, not ex-  
13 ceeding an amount specified in said undertaking, as such person enjoined may  
14 incur or sustain by reason of the issuance of a temporary injunction, if it  
15 shall be finally decided that plaintiff was not entitled thereto.

16 Within five (5) days after the service of the temporary injunction, the  
17 defendant may except to the sufficiency of the sureties. If the defendant  
18 fails to do so he is deemed to have waived all objections to them.

19 When excepted to, the plaintiff's sureties, upon notice to the defen-  
20 dant of not less than two (2) nor more than five (5) days, must justify be-  
21 fore the judge, in the same manner as upon bail or arrest, and upon failure to  
22 justify, or if others in their place fail to justify at the time and place ap-  
23 pointed the order granting an injunction shall be dissolved.

24 (6) Injury and Damages. In any action under this act, it is not neces-  
25 sary to allege or prove actual damages or threat thereof, or actual injury or  
26 threat thereof, to the plaintiff. But, in addition to injunctive relief, any  
27 plaintiff in any such action is entitled to recover the amount of the actual  
28 damages, if any, sustained by the plaintiff, as well as the actual damages,  
29 if any, sustained by any person who has assigned to the plaintiff his claim  
30 for damages resulting from a violation of this act.

31 SECTION 9. That Section 54-1908, Idaho Code, be, and the same is hereby  
32 amended to read as follows:

33 54-1908. MEETINGS -- QUORUM. The board shall hold not less than four  
34 (4) regular meetings each year, on a day not later than the fifteenth day of  
35 the month in each of the months of January, April, July and October, for the  
36 purpose of transacting such business as may properly come before it. At the  
37 April meeting of each year the board shall elect officers. Special or regu-  
38 lar monthly meetings of the board may be held at such times as the board may  
39 provide in the rules. Four (4) members of the board shall constitute a quo-  
40 rum. Two (2) members of the board may call a special meeting at any time. Due  
41 notice of each meeting of the board and the time and place thereof shall be  
42 given each member in the manner prescribed in the rules. Each member of the  
43 board shall be compensated as provided by section 59-509(n), Idaho Code, and  
44 paid from the public works contractors license board ~~account~~ fund.

45 SECTION 10. That Section 54-3503, Idaho Code, be, and the same is hereby  
46 amended to read as follows:

1        54-3503. LICENSE REQUIRED. (1) From and after ~~the 1st day of~~ January 1,  
 2 1995, it is unlawful for any person to assume or use the title or designation  
 3 of "dietitian," "certified dietitian," "registered dietitian," or any other  
 4 combination of terms ~~which~~ that include the title "dietitian," unless such  
 5 person has been issued a license pursuant to this chapter and the license is  
 6 in good standing pursuant to rules of the board. Nothing contained herein  
 7 shall be construed to prohibit the use of the term "dietetic" or "diet" as a  
 8 descriptive term in connection with a person's occupation or employment.

9        (2) No person shall use any other title, designation, words, letters,  
 10 abbreviations, or sign, card or device which indicates to the public that  
 11 such person is a dietitian or has been issued a temporary permit pursuant to  
 12 this chapter unless the person is so licensed or has been issued such permit,  
 13 and the license or permit is in good standing pursuant to rules of the board.

14        (3) A person who is a registered dietitian, as determined by the commis-  
 15 sion on dietetic registration of the ~~American dietetic association~~ academy  
 16 of nutrition and dietetics, or, who is credentialed as a dietitian by any  
 17 other association which is also recognized by the national commission for  
 18 ~~health~~ certifying agencies, may continue to use such credential without be-  
 19 ing licensed pursuant to this chapter as long as the person does not engage in  
 20 activities set forth in section 54-3505(3), Idaho Code.

21        SECTION 11. That Section 54-3504, Idaho Code, be, and the same is hereby  
 22 amended to read as follows:

23        54-3504. DIETETIC LICENSURE BOARD CREATED -- APPOINTMENT --  
 24 TERMS. (1) A dietetic licensure board is hereby created and the members  
 25 thereof shall be appointed by the Idaho state board of medicine within sixty  
 26 (60) days following the effective date of this chapter.

27        (2) The dietetic licensure board shall consist of four (4) members,  
 28 three (3) of whom shall be dietitians and one (1) member shall be a member  
 29 of the public with an interest in the rights of the consumer of health care  
 30 services.

31        (3) In making appointments to the dietetic licensure board, the board  
 32 shall give consideration to recommendations made by the Idaho ~~dietetic as-~~  
 33 ~~sociation~~ academy of nutrition and dietetics, other professional organiza-  
 34 tions and dietitians and physicians.

35        (4) All members of the dietetic licensure board shall be current resi-  
 36 dents of the state of Idaho and have been residents of the state of Idaho for a  
 37 minimum of three (3) years immediately preceding appointment.

38        (5) The initial three (3) dietitian members of the dietetic licensure  
 39 board shall be persons registered by the commission on dietetic registra-  
 40 tion, ~~American dietetic association~~ academy of nutrition and dietetics,  
 41 who are eligible to become licensed pursuant to this chapter, and who shall,  
 42 within such time, as may be established by the board, become licensed pur-  
 43 suant to this chapter.

44        (6) The initial dietetic licensure board shall be appointed for stag-  
 45 gered terms, the longer of which will not exceed four (4) years. After the  
 46 initial appointments, all terms shall be four (4) years, and a member may be  
 47 reappointed. In the event of death, resignation, or removal of any member  
 48 before the expiration of the term to which appointed, the vacancy shall be

1 filled for the unexpired portion of the term in the same manner as the original  
2 appointment.

3 (7) The board may, upon recommendation of the dietetic licensure board,  
4 or upon its own motion, remove any member of the dietetic licensure board,  
5 for cause, prior to the expiration of the member's term.

6 (8) The dietetic licensure board shall, within thirty (30) days after  
7 its appointment, and at least annually thereafter, hold a meeting and elect a  
8 chairperson. The licensure board may hold additional meetings on the call of  
9 the chairperson or at the written request of any two (2) members of the licensure  
10 board. The licensure board may appoint such committees as it considers  
11 necessary to carry out its duties. A majority of the members of the licensure  
12 board shall constitute a quorum.

13 (9) Each member of the licensure board shall be compensated as provided  
14 in section 59-509(n), Idaho Code.

15 SECTION 12. That Section 54-3508, Idaho Code, be, and the same is hereby  
16 amended to read as follows:

17 54-3508. WAIVER OF REQUIREMENTS. (1) The licensure board shall grant a  
18 license to any person who, on the effective date of this chapter, is registered  
19 as a dietitian by and with the commission on dietetic registration for  
20 the ~~American dietetic association~~ academy of nutrition and dietetics, a member  
21 of the national commission for health certifying agencies.

22 (2) The licensure board may waive the examination, education, or experience  
23 requirements and grant a license to any person registered by the commission  
24 after the effective date of this chapter if the board determines the  
25 requirements for such registration to be equivalent to the requirements for  
26 licensure set forth in this chapter.

27 (3) The licensure board may waive the examination, education, or experience  
28 requirements and grant a license to any applicant who shall present  
29 proof of current licensure to engage in the practice of dietetics in another  
30 state, the District of Columbia, or territory of the United States which requires  
31 standards for licensure considered by the board to be equivalent to  
32 the requirements for licensure pursuant to this chapter.

33 SECTION 13. That Section 59-1302, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35 59-1302. DEFINITIONS. (1) As used in this chapter, each of the terms  
36 defined in this section shall have the meaning given in this section unless a  
37 different meaning is clearly required by the context.

38 (2) "Active member" means any employee who is not establishing the  
39 right to receive benefits through his or her employer's participation in any  
40 other retirement system established for Idaho public employees, if such participation  
41 is mandated by applicable Idaho statutes other than this chapter.  
42 In no case will an employee be entitled to any benefit under this chapter  
43 for public service if such employee is establishing retirement benefit entitlements  
44 by other Idaho statutes or federal statutes other than military  
45 service or social security for that same service.

46 (3) "Accumulated contributions" means the sum of amounts contributed  
47 by a member of the system, together with regular interest credit thereon.

1 (4) "Actuarial equivalent" means a benefit equal in value to another  
2 benefit, when computed upon the basis of the actuarial tables in use by the  
3 system.

4 (5) "Actuarial tables" means such tables as shall have been adopted by  
5 the board in accordance with recommendations of the actuary.

6 (5A) "Alternate payee" means a spouse or former spouse of a member who is  
7 recognized by an approved domestic retirement order as having a right to all  
8 or a portion of the accrued benefits in the retirement system with respect to  
9 such member.

10 (5B) "Approved domestic retirement order" means a domestic retirement  
11 order which creates or recognizes the existence of an alternate payee's  
12 right or assigns to an alternate payee the right to all or a portion of the  
13 accrued benefits of a member under the retirement system, which directs the  
14 system to establish a segregated account or disburse benefits to an alter-  
15 nate payee, and which the executive director of the retirement system has de-  
16 termined meets the requirements of sections 59-1319 and 59-1320, Idaho Code.

17 (5C) "Average monthly salary" means the member's average salary during  
18 the base period as calculated pursuant to rules adopted by the retirement  
19 board.

20 (5D) (a) "Base period" means the period of fifty-four (54) consecutive  
21 calendar months during which the member earned:

22 (i) The highest average salary; and

23 (ii) Membership service of at least one-half (1/2) the number of  
24 months in the period, excluding months of service attributable to:

25 A. Military service;

26 B. Service qualifying as minimum benefit pursuant to sec-  
27 tion 59-1342(5), Idaho Code; and

28 C. Worker's compensation income benefits.

29 (b) Effective October 1, 1993, the consecutive calendar months shall be  
30 forty-eight (48). Effective October 1, 1994, the consecutive calendar  
31 months shall be forty-two (42).

32 (c) Entitlement to a base period shall not vest until the effective date  
33 of that base period. The retirement benefits shall be calculated on the  
34 amounts, terms and conditions in effect at the date of the final contri-  
35 bution by the member.

36 (d) If no base period exists for a member, the member's average monthly  
37 salary shall be determined by the board, using standards not inconsis-  
38 tent with those established in this subsection.

39 (e) To assure equitable treatment for all members, salary increments  
40 inconsistent with usual compensation patterns may be disallowed by the  
41 board in determining average monthly salary and base period.

42 (6) "Beneficiary" means the person who is nominated by the written des-  
43 ignation of a member, duly executed and filed with the board, to receive the  
44 death benefit.

45 (7) "Calendar year" means twelve (12) calendar months commencing on the  
46 first day of January.

47 (7A) "Contingent annuitant" means the person designated by a member un-  
48 der certain retirement options to receive benefit payments upon the death of  
49 the member. The person so designated must be born and living on the effective  
50 date of retirement.

1 (8) "Credited service" means the aggregate of membership service,  
2 prior service and disabled service.

3 (9) "Date of establishment" means July 1, 1965, or a later date estab-  
4 lished by the board or statute.

5 (10) "Death benefit" means the amount, if any, payable upon the death of  
6 a member.

7 (11) "Disability retirement allowance" means the periodic payment be-  
8 coming payable upon an active member's ceasing to be an employee while eligi-  
9 ble for disability retirement.

10 (12) "Disabled" means:

11 (a) That the member is prevented from engaging in any occupation or em-  
12 ployment for remuneration or profit as a result of bodily injury or dis-  
13 ease, either occupational or nonoccupational in cause, but excluding  
14 disabilities resulting from service in the armed forces of any country  
15 other than the United States, or from an intentionally self-inflicted  
16 injury; and

17 (b) That the member will likely remain so disabled permanently and con-  
18 tinuously during the remainder of the member's life.

19 It is not necessary that a person be absolutely helpless or entirely unable  
20 to do anything worthy of compensation to be considered disabled. If the per-  
21 son is so disabled that substantially all the avenues of employment are rea-  
22 sonably closed to the person, that condition is within the meaning of "dis-  
23 abled." In evaluating whether a person is disabled, medical factors and non-  
24 medical factors including, but not limited to, education, economic and so-  
25 cial environment, training and usable skills may be considered.

26 Refusal to submit to a medical examination ordered by the board before  
27 the commencement of a disability retirement allowance or at any reasonable  
28 time thereafter shall constitute proof that the member is not disabled. The  
29 board shall be empowered to select for such medical examination one (1) or  
30 more physicians or surgeons who are licensed to practice medicine and per-  
31 form surgery. The fees and expenses of such examination shall be paid from  
32 the administration account of the fund. No member shall be required to un-  
33 dergo such examination more often than once each year after he has received a  
34 disability retirement allowance continuously for two (2) years.

35 (12A) "Disabled service" means the total number of months elapsing from  
36 the first day of the month next succeeding the final contribution of a member  
37 prior to receiving a disability retirement allowance to the first day of the  
38 month following the date of termination of such disability retirement al-  
39 lowance. During such period, the member shall remain classified in the mem-  
40 bership category held during the month of final contribution. The total num-  
41 ber of months of disabled service credited for a person first becoming dis-  
42 abled after the effective date of this chapter shall not exceed the excess,  
43 if any, of three hundred sixty (360) over the total number of months of prior  
44 service and membership service.

45 (12B) "Domestic retirement order" means any judgment, decree, or order,  
46 including approval of a property settlement agreement which relates to the  
47 provision of marital property rights to a spouse or former spouse of a mem-  
48 ber, and is made pursuant to a domestic relations law, including the commu-  
49 nity property law of the state of Idaho or of another state.

1 (13) "Early retirement allowance" means the periodic payment becoming  
 2 payable upon an active member's ceasing to be an employee while eligible for  
 3 early retirement.

4 (14) (A) "Employee" means:

5 (a) Any person who normally works twenty (20) hours or more per week for  
 6 an employer or a school teacher who works half-time or more for an em-  
 7 ployer and who receives salary for services rendered for such employer;

8 (b) Elected officials or appointed officials of an employer who receive  
 9 a salary;

10 (c) A person who is separated from service with less than five (5) con-  
 11 secutive months of employment and who is reemployed or reinstated by the  
 12 same employer within thirty (30) days; or

13 (d) A person receiving differential wage payments as defined in 26  
 14 U.S.C. 3401(h) on or after July 1, 2009. A differential wage payment  
 15 generally refers to an employer payment to an employee called to active  
 16 duty in the uniformed services for more than thirty (30) days that rep-  
 17 represents all or a portion of the compensation he would have received from  
 18 the employer if he were performing services for the employer.

19 (B) "Employee" does not include employment as:

20 (a) A person rendering service to an employer in the capacity of an in-  
 21 dependent business, trade or profession; or

22 (b) A person whose employment with any employer does not total five (5)  
 23 consecutive months; or

24 (c) A person provided sheltered employment or made-work by a public em-  
 25 ployer in an employment or industries program maintained for the bene-  
 26 fit of such person; or

27 (d) An inmate of a state institution, whether or not receiving compen-  
 28 sation for services performed for the institution; or

29 (e) A student enrolled in an undergraduate, graduate, or professional-  
 30 technical program at and employed by a state college, university, com-  
 31 munity college or professional-technical center when such employment  
 32 is predicated on student status; or

33 (f) A person making contributions to the ~~United States civil service~~  
 34 ~~commission~~ director of the office of personnel management under the  
 35 ~~United States Civil Service System Retirement Act~~ except that a  
 36 person who receives separate remuneration for work currently performed  
 37 for an employer and the United States government may elect to be a member  
 38 of the retirement system in accordance with rules of the board; or

39 (g) A person not under contract with a school district or charter  
 40 school, who on a day to day basis works as a substitute teacher replac-  
 41 ing a contracted teacher and is paid a substitute wage as established  
 42 by district policy or who, on a day to day basis works as a substitute  
 43 assistant replacing a staff instruction assistant or a staff library  
 44 assistant and is paid a substitute wage as established by district pol-  
 45 icy; or

46 (h) A person occupying a position that does not exceed eight (8) con-  
 47 secutive months in a calendar year with a city, county, irrigation dis-  
 48 trict, cemetery district or mosquito abatement district when the city,  
 49 county, irrigation district, cemetery district or mosquito abatement  
 50 district has certified, in writing to the system, the position is (i)



1 seasonal or casual; and (ii) affected by weather, including parks, golf  
2 course positions and irrigation positions; or

3 (i) A person in a position that (i) is eligible for participation in  
4 an optional retirement program established under section 33-107A or  
5 33-107B, Idaho Code, or (ii) would be eligible for participation in  
6 an optional retirement program established under section 33-107A or  
7 33-107B, Idaho Code, if the person was not working less than half-time  
8 or less than twenty (20) hours per week.

9 (15) "Employer" means the state of Idaho, or any political subdivision  
10 or governmental entity, provided such subdivision or entity has elected to  
11 come into the system. Governmental entity means any organization composed  
12 of units of government of Idaho or organizations funded only by government  
13 or employee contributions or organizations who discharge governmental re-  
14 sponsibilities or proprietary responsibilities that would otherwise be per-  
15 formed by government. All governmental entities are deemed to be political  
16 subdivisions for the purpose of this chapter.

17 (15A) "Final contribution" means the final contribution made by a mem-  
18 ber pursuant to sections 59-1331 through 59-1334, Idaho Code.

19 (16) "Firefighter" means an employee, including paid firefighters  
20 hired on or after October 1, 1980, whose primary occupation is that of pre-  
21 venting and extinguishing fires as determined by the rules of the board.

22 (17) "Fiscal year" means the period beginning on July 1 in any year and  
23 ending on June 30 of the next succeeding year.

24 (18) "Fund" means the public employee retirement fund established by  
25 this chapter.

26 (19) "Funding agent" means any bank or banks, trust company or trust  
27 companies, legal reserve life insurance company or legal reserve life insur-  
28 ance companies, or combinations thereof, any thrift institution or credit  
29 union or any investment management firm or individual investment manager  
30 selected by the board to hold and/or invest the employers' and members' con-  
31 tributions and pay certain benefits granted under this chapter.

32 (20) "Inactive member" means a former active member who is not an em-  
33 ployee and is not receiving any form of retirement allowance, but for whom a  
34 separation benefit has not become payable.

35 (20A) "Lifetime annuity" means periodic monthly payments of income by  
36 the retirement system to an alternate payee.

37 (20B) "Lump sum distribution" means a payment by the retirement system  
38 of the entire balance in the alternate payee's segregated account, together  
39 with regular interest credited thereon.

40 (21) "Member" means an active member, inactive member or a retired mem-  
41 ber.

42 (22) "Membership service" means military service which occurs after  
43 the commencement of contributions payable under sections 59-1331 through  
44 59-1334, Idaho Code, and service with respect to which contributions are  
45 payable under sections 59-1331 through 59-1334, Idaho Code, which, except  
46 for benefit calculations described in sections 59-1342 and 59-1353, Idaho  
47 Code, includes service transferred to a segregated account under an approved  
48 domestic retirement order.

49 (23) "Military service" means any period of active duty service in the  
50 armed forces of the United States including the national guard and reserves,

1 under the provisions of title 10, title 32, and title 37, United States code,  
 2 which commences less than ninety (90) days after the person ceases to be an  
 3 employee and ends less than ninety (90) days before the person again becomes  
 4 an employee. Provided, if a member fails to again become an employee as a re-  
 5 sult of his death while in active duty service, the member shall be entitled  
 6 to military service through the date of death. Provided further, if a member  
 7 fails to again become an employee due to a disability retirement resulting  
 8 from service in the armed forces of the United States, the member shall be en-  
 9 titled to military service through the date the disability allowance becomes  
 10 payable. In no event shall military service include:

11 (a) Any period ended by dishonorable discharge or during which termina-  
 12 tion of such service is available but not accepted; or

13 (b) Any active duty service in excess of five (5) years if at the conve-  
 14 nience of the United States government, or in excess of four (4) years  
 15 if not at the convenience of the United States government, provided  
 16 additional membership service may be purchased as provided in section  
 17 59-1362, Idaho Code.

18 (24) (a) "Police officer" for retirement purposes shall be as defined in  
 19 section 59-1303, Idaho Code.

20 (b) "POST" means the Idaho peace officer standards and training council  
 21 established in chapter 51, title 19, Idaho Code.

22 (25) "Prior service" means any period prior to July 1, 1965, of military  
 23 service or of employment for the state of Idaho or any political subdivision  
 24 or other employer of each employee who is an active member or in military ser-  
 25 vice or on leave of absence on the date of establishment, provided, however,  
 26 an employee who was not an active member or in military service or on leave  
 27 of absence on the date of establishment shall receive credit for the member's  
 28 service prior to July 1, 1965, on the basis of recognizing two (2) months of  
 29 such service for each month of membership service. For the purpose of com-  
 30 puting such service, no deduction shall be made for any continuous period of  
 31 absence from service or military service of six (6) months or less.

32 (26) "Regular interest" means interest at the rate set from time to time  
 33 by the board.

34 (27) "Retired member" means a former active member receiving a retire-  
 35 ment allowance.

36 (28) "Retirement" means the acceptance of a retirement allowance under  
 37 this chapter upon termination of employment.

38 (29) "Retirement board" or "board" means the board provided for in sec-  
 39 tions 59-1304 and 59-1305, Idaho Code, to administer the retirement system.

40 (30) "Retirement system" or "system" means the public employee retire-  
 41 ment system of Idaho.

42 (31) (A) "Salary" means:

43 (a) The total salary or wages paid to a person who meets the definition  
 44 of employee by an employer for personal services performed and reported  
 45 by the employer for income tax purposes, including the cash value of all  
 46 remuneration in any medium other than cash.

47 (b) The total amount of any voluntary reduction in salary agreed to by  
 48 the member and employer where the reduction is used as an alternative  
 49 form of remuneration to the member.

(B) Salary in excess of the compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded for any person who becomes a member of the system on or after July 1, 1996. The system had no limitations on compensation in effect on July 1, 1993. The compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall not apply for an "eligible employee." For purposes of this subsection, "eligible employee" is an individual who was a member of the system before July 1, 1996.

(C) "Salary" does not include:

(a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.

(b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs, sick leave payoffs, early retirement incentive payments and bonuses.

(c) Differential wage payments as defined in 26 U.S.C. 3401(h). A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer.

(d) Employer payments to employees for or related to travel, mileage, meals, lodging or subsistence expenses, without regard to the taxability of such payments for federal income tax purposes and without regard to the form of payment, including payment made as reimbursement of an itemized expense voucher and payment made of an unvouchered expense allowance.

(31A) "Segregated account" means the account established by the retirement system for the alternate payee of a member who is not a retired member. It shall include the months of credited service and accumulated contributions transferred from the member's account.

(32) "Separation benefit" means the amount, if any, payable upon or subsequent to separation from service.

(33) "Service" means being shown on an employer's payroll as an employee receiving a salary. For each calendar month, service is credited only when a member is an employee as defined in subsection (14) (A) of this section and is employed for fifteen (15) days or more during the calendar month. Employment of fourteen (14) days or less during any calendar month shall not be credited. No more than one (1) month of service shall be credited for all service in any month.

(34) "Service retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for service retirement.

(35) "State" means the state of Idaho.

(36) "Vested member" means an active or inactive member who has at least five (5) years of credited service, except that a member, who at the time of his separation from service:

(a) Held an office to which he had been elected by popular vote or having a term fixed by the constitution, statute or charter or was appointed to such office by an elected official; or

1 (b) Was the head or director of a department, division, agency, statu-  
2 tory section or bureau of the state; or

3 (c) Was employed on or after July 1, 1965, by an elected official of  
4 the state of Idaho and occupied a position exempt from the provisions of  
5 chapter 53, title 67, Idaho Code; and

6 (d) Was not covered by a merit system for employees of the state of  
7 Idaho,  
8 is vested without regard to the length of credited service.

9 (37) The masculine pronoun, wherever used, shall include the feminine  
10 pronoun.

11 SECTION 14. That Section 59-1324, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 59-1324. TRANSFER OF MONEYS FROM STATE ~~JUNIOR COMMUNITY~~ COLLEGE AC-  
14 COUNT. After July 1, 1984, the state board of education shall, at the re-  
15 quest of the board, direct the transfer from the state ~~junior community~~ col-  
16 lege account or from appropriations made for that purpose to the public em-  
17 ployee retirement account of an aggregate sum in lieu of and equivalent to  
18 individual employer contributions provided by section 59-1322, Idaho Code,  
19 required with respect to employees of ~~junior community~~ college districts on  
20 the basis of salaries paid such employees as certified by the board to the  
21 state treasurer.

22 SECTION 15. That Section 59-1391, Idaho Code, be, and the same is hereby  
23 amended to read as follows:

24 59-1391. DEFINITIONS. As used in sections 59-1391 through and includ-  
25 ing 59-1399, Idaho Code, each of the terms defined shall have the meaning  
26 given in this section or in section 59-1302, Idaho Code, unless a different  
27 meaning is clearly required by the context.

28 (a) "Board" means the retirement board of the employee system.

29 (b) "Firefighter member" ~~and "firefighter member"~~ means a person or  
30 beneficiary who, prior to October 1, 1980, was receiving benefits or es-  
31 tablishing the right to receive benefits from the firefighters' retirement  
32 fund.

33 (c) "Firefighters' retirement fund" means the retirement system cre-  
34 ated by and existing ~~through~~ pursuant to chapter 14, title 72, Idaho Code.

35 (d) "Employee system" means the retirement system created and existing  
36 ~~through~~ pursuant to chapter 13, title 59, Idaho Code.

37 (e) "Employer" means a city or fire district that employs paid fire-  
38 fighters who are participating in the firefighters' retirement fund on Octo-  
39 ber 1, 1980.

40 (f) "Paid firefighter" ~~and "paid firefighter"~~ means any individual,  
41 male or female, excluding office secretaries on the payroll of any city or  
42 fire district in the state of Idaho who devotes his or her principal time  
43 of employment to the care, operation, maintenance or the requirements of a  
44 regularly constituted fire department of such city or fire district in the  
45 state of Idaho.

1       SECTION 16. That Section 65-501, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3       65-501. STATEMENT OF PURPOSE. It is the intent of the legislature to  
4 honor veterans of the armed forces by providing preference in initial ap-  
5 pointments to public sector jobs in Idaho. ~~Veteran's~~ Veterans' preference  
6 is intended to honor those citizens who have served their country in ac-  
7 tive duty by providing veterans a more favorable competitive position for  
8 government employment and acknowledging the larger sacrifice of disabled  
9 veterans. Eligible veterans are provided advantages in public employment  
10 in Idaho, including preference for initial employment and retention in the  
11 event of layoffs. ~~Veteran's~~ Veterans' preference requires public employers  
12 to provide additional consideration for eligible veterans, but it does not  
13 guarantee the veteran a job.

14       SECTION 17. That Section 65-503A, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16       65-503A. EMPLOYER OBLIGATIONS. (1) Public employers must give notice  
17 in all announcements and advertisements of vacancies that preference in  
18 appointment will be given to preference applicants. Application forms must  
19 inquire whether the applicant is claiming ~~veteran's~~ veterans' preference  
20 and whether the applicant has previously claimed such a preference. An  
21 applicant claiming preference is responsible for providing required doc-  
22 umentation at the time of making application. The employer must inform  
23 applicants of the requirements for documentation.

24       (2) In all public employment, excluding key employee positions, the  
25 hiring official shall give preference to preference eligible applicants.

26       (3) An application for appointment to a position will be accepted after  
27 the closing date of the examination from an applicant who was serving in the  
28 armed forces, or undergoing service-connected hospitalization up to one (1)  
29 year following discharge. The application must be submitted within one hun-  
30 dred twenty (120) days of the applicant's separation from the armed forces  
31 or hospitalization, prior to the expiration of any register established as a  
32 result of the examination, and prior to the selection for the position.

33       (4) A disabled veteran may file an application at any time up until a  
34 selection has been made for any position for which a register is then main-  
35 tained as a source for future job openings, or for which a register is about  
36 to be established, provided he or she has not already been examined twice for  
37 the same position and grade for which application is made, does not have cur-  
38 rent eligibility on that register, or is not serving in a competitive posi-  
39 tion in the same grade for which application is made. If a register is not  
40 used as a part of the selection process, a disabled veteran may file an appli-  
41 cation after the closing date, but such application will only be considered  
42 if a selection has not been made and the selection process is still active.

43       (5) An appointing authority may refuse to accept an application from an  
44 otherwise qualified preference eligible applicant who is deemed unqualified  
45 through his or her actions. Examples of such actions include dismissal for  
46 cause from a public entity, a felony conviction, or conduct unbecoming a pub-  
47 lic employee. Such refusal must be supported by good cause and is appealable  
48 pursuant to section 65-506, Idaho Code.